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RUEHIL/AMEMBASSY ISLAMABAD PRIORITY 9460
RUEHKT/AMEMBASSY KATHMANDU PRIORITY 7715
RUEHLO/AMEMBASSY LONDON PRIORITY 5453
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 3882
RUEHNY/AMEMBASSY OSLO PRIORITY 0039
RUEHOT/AMEMBASSY OTTAWA PRIORITY 0239
RUEHSM/AMEMBASSY STOCKHOLM PRIORITY 0855
RUEHKO/AMEMBASSY TOKYO PRIORITY 4502
RUEHCG/AMCONSUL CHENNAI PRIORITY 0021
RUEHBI/AMCONSUL MUMBAI PRIORITY 7255
RUEHON/AMCONSUL TORONTO PRIORITY 0234
RHEFDIA/DIA WASHINGTON DC PRIORITY
RUEHGV/USMISSION GENEVA PRIORITY 0146
RHHMUNA/HQ USPACOM HONOLULU HI PRIORITY
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RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY
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C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 000132

SIPDIS

DEPARTMENT FOR SCA/INSB

E.O. 12958: DECL: 02/23/2019

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SUBJECT: FONSEKA CATCH-22: SUPREME COURT RULES NO RELEASE
WITHOUT CHARGES

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Classified By: DEPUTY CHIEF OF MISSION VALERIE C. FOWLER. REASONS: 1.4
(B, D)

11. (C) SUMMARY: At a Fundamental Rights hearing on February 23, the Supreme Court denied General Fonseka release as interim relief because his claim that there was no reason to detain him could not be verified until the investigation was completed and, presumably, charges were filed. At the same time, however, the court authorized protection of Fonseka's security, greater access by his family, access by his attorneys, and possibly access by his physicians. The next hearing was scheduled for April 26, 2010. Embassy PolOff attended the hearing. END SUMMARY.

RELIEF DENIED

12. (SBU) On February 23, the Sri Lankan Supreme Court denied former presidential candidate General Fonseka's petition for release as interim relief in his fundamental rights case challenging the legality of his detention. The court ruled that because the basis of the submission for interim relief was "linked" to the final relief requested, the court was "not in a position" to grant the interim relief. (NOTE: The court was presided over by Acting Chief Justice Shirani Bandaranayake, considered a Rajapaksa loyalist. Several days ago, the president made a show of appointing her in place of Chief Justice Asoka de Silva, who was thought to be more sympathetic to the case but is traveling abroad. END NOTE.) Fonseka was not present at the hearing and his attorney had not had access to him. The next hearing was set for April 26, 2010, after the parliamentary elections.

13. (SBU) The court adopted the Attorney General's argument that Fonseka's claim that there was no reason to detain him could not be verified until the investigation had been completed. While no charges have been filed against Fonseka,

areas of investigation mentioned by the Attorney General included the alleged 400 army "deserters" at the hotel with Fonseka during election day, Fonseka's statement that he would release "top secret" information on the final stages of the war, and the Hi-Corp military procurement corruption case involving his son-in-law.

...BUT ACCESS FOR FAMILY, LAWYERS EXPANDED

14. (SBU) As recorded by the court, the parties agreed that upon request by Fonseka's counsel, the Attorney General would "give appropriate direction to the authorities" on 1) protection of Fonseka's "well-being, safety, and security" (NOTE: The Attorney General declined to include the word "life," preferring "well-being" as "no one can predict tomorrow." END NOTE.); 2) reasonable access to Fonseka by his immediate family, to include children, grandchildren, and in-laws (in addition to his wife, who already has access); and 3) access to Fonseka by "identified lawyers." Fonseka's counsel also requested reasonable unimpeded access to Fonseka by medical personnel. The Attorney General agreed to medical access during argument, but it was unclear whether this point was entered into the court's final record.

COMMENT

15. (C) Fonseka's case drew great attention. The courtroom was packed, and his wife was met by swarms of media upon her exit from the courthouse. The denial of relief was not surprising, but the improvements in access to Fonseka, if actually granted, are important steps. The court's reasoning

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put Fonseka in a Catch-22: without formal charges against him, he cannot claim that there is no reason to detain him.
BUTENIS